

Formal Action # 99-37 II

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE FOR THE TWENTIETH
JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE,
Plaintiff,

v.

THE BASKET CONNECTION, INC.,
an Oregon corporation,
Respondent.

ASSURANCE OF VOLUNTARY COMPLIANCE

THIS ASSURANCE OF VOLUNTARY COMPLIANCE ("Assurance") is given by The Basket Connection, Inc. of Estacada, Oregon ("Respondent"), to John Knox Walkup, Attorney General and Reporter for the State of Tennessee ("Attorney General").

WITNESSETH:

Some of the facts and circumstances surrounding the execution of this Assurance are as follows:

A. The Division of Consumer Affairs of the Department of Commerce and Insurance (the "Division") and the Attorney General conducted an investigation of Respondent's specific business practices at the Business Opportunity and Franchise Show held at the Nashville Convention Center on October 26-27, 1996 in Nashville, Tennessee. These practices include misrepresenting the earning potential of Respondent's business opportunity to consumers without providing appropriate substantiation. Respondent's business practices are more fully described in the accompanying Petition. As a result of the

investigation, the Division and the Attorney General determined that certain acts and practices of Respondent violated the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, et seq. (the "Act").

B. Respondent denies any wrongdoing.

C. Therefore, pursuant to Tenn. Code Ann. § 47-18-107, Respondent desires to give this Assurance, and the Attorney General desires to accept it, in order to avoid the expense of litigation.

NOW, THEREFORE, acting pursuant to Tenn. Code Ann. § 47-18-107, Respondent gives, and the Attorney General accepts, the following assurances:

1. BUSINESS PRACTICES

Accordingly, it is hereby agreed that upon approval of the Court, Respondent shall be permanently and forever enjoined and bound from directly or indirectly engaging in the practices set forth herein:

1.1 Respondent shall fully abide by all provisions of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, et seq., including but not limited to §§ 47-18-104(a), (b)(3), (b)(5), (b)(12), (b)(27) and § 47-18-120, which prohibit unfair and deceptive acts and practices.

1.2 Respondent shall not, directly or indirectly, make any representation(s) to consumer(s) that a transaction confers or involves rights, remedies or obligations that it does not have or involve or which are in violation of Tenn. Code Ann. § 47-18-104(b)(12).

1.3 Respondent shall not directly or indirectly, provide information, estimates, approximations and/or representations regarding the potential income and/or earnings, which may result from the purchase, ownership and/or operation of Respondent's business opportunity or franchise, without complete and accurate substantiation for each such claim at the time such claims are made. Complete and accurate information, in the context of this paragraph, refers to at a minimum, the information required by the FTC Franchise Rule.

1.4 Respondent shall review any employee's record if Respondent receives two or more complaints or other reliable information indicating that an employee has made any misrepresentation to a consumer, or otherwise violated any provision of this Assurance. Respondent shall promptly discipline employees for such employee misconduct and review all sales of Respondent's business opportunities by that employee to ensure that no violations to this Assurance occurred. Further Respondent shall report any such findings to the Attorney General within two days of discovery if the conduct occurred within the State of Tennessee or involved a Tennessee consumer.

1.5 Respondent shall conduct and provide training sessions and a written training manual regarding the Act to all of Respondent's employees and/or representatives who are responsible for and/or involved with

the selling and/or promoting of business opportunities in Tennessee. Training sessions shall specifically include information designed to educate all such employees about the requirements of the Tennessee Consumer Protection Act, and to ensure that they are aware of all of the requirements, including, but not limited to, the obligation to provide full and complete disclosure in accordance with the Tennessee Consumer Protection Act to interested consumers. These training sessions shall also specifically include information regarding Respondent's policy prohibiting unsubstantiated earnings claims during conversations with interested consumers. Within sixty days of execution of this Assurance, Respondent shall provide to the Attorney General a copy of all training materials provided to its employees and an affidavit stating and certifying that the employee training session and materials have been provided to all employees responsible for and/or involved in the selling or promoting of business opportunities to consumers in Tennessee along with a copy of Respondent's procedure for ensuring that all new employees receive appropriate training and the training materials in the future prior to engaging in sales activities on behalf of the Respondent. "Training materials" includes, but is not limited to, correspondence, memoranda, company literature and/or brochures, which provide information regarding the sale of Respondent's business opportunities.

Alternatively, Respondent having indicated that it no longer intends to sell or market its business opportunity in Tennessee, Respondent may within sixty days of the execution of the Assurance, certify in writing to the Attorney General that it does not intend to sell or promote its business opportunity in Tennessee. Should Respondent later decide to re-enter this State, it will undertake the obligations of this section prior to conducting business in Tennessee.

2. JURISDICTION

2.1 Jurisdiction of this Court over the subject matter herein and over the person of the Respondent for the purposes of entering into and enforcing this Assurance and Agreed Order is admitted. Jurisdiction is retained by this Court for the purpose of enabling the State to apply such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Assurance and Agreed Order, including enforcement of compliance therewith and assessment of penalties for violation(s) thereof. Respondent agrees to pay all court costs and attorneys' fees and any costs associated with any petitions to enforce any provision of this Assurance and Agreed Order against Respondent.

3. PAYMENT OF ATTORNEYS' FEES AND COSTS TO THE STATE

3.1 Respondent shall pay the sum of Five Hundred and 00/100 Dollars (\$500.00) to the State of Tennessee for attorneys' fees and costs of investigation, prosecution and monitoring for compliance of this matter, which may be used for consumer protection purposes at the sole discretion of the Attorney General. Said payment shall be made by providing the Attorney General or his designated representative a cashier's or certified check made payable to the State of Tennessee on the day of execution of this Assurance.

4. OTHER PAYMENT TO THE STATE

4.1 Respondent shall pay the sum of Five Hundred and 00/100 Dollars (\$500.00) which shall be designed for the General Fund of the State of Tennessee.

4.2 Respondent shall make this payment by providing the Attorney General or his designated representatives a certified or cashier's check in the amount of Five Hundred and 00/100 Dollars (\$500.00) payable to the State of Tennessee on the date of executing this Assurance.

5. MONITORING AND COMPLIANCE

5.1 Upon request, Respondent agrees to provide books, records and documents to the State at any time, and further, to informally or formally under oath, provide testimony and other information to the State relating to compliance with this Assurance. Respondent shall make any requested information available within one (1) week of the request, at the Office of the Attorney General or at any other location within the State of Tennessee that is agreeable to Respondent and the Attorney General. This section shall in no way limit the State's right to obtain documents, information, or testimony pursuant to any federal or state law, regulation, or rule.

6. PRIVATE RIGHT OF ACTION

6.1 Pursuant to Tenn. Code Ann. § 47-18-109, nothing in this Assurance shall be construed to affect any private right of action that a consumer may hold against Respondent.

7. PENALTY FOR FAILURE TO COMPLY

7.1 Respondent understands that upon execution and filing of this Assurance, any subsequent failure to comply with the terms hereof is prima facie evidence of a violation of the Tennessee Consumer Protection Act.

7.2 Respondent understands that any knowing violation of the terms of this Assurance is punishable by civil penalties of not more than One Thousand Dollars (\$1,000.00) for each violation, in addition to any other appropriate penalties and sanctions, including but not limited to contempt sanctions and the imposition of attorneys' fees and civil penalties. Respondent agrees to pay all court costs and attorneys' fees associated with any petitions to enforce this Assurance and Order against the Respondent.

8. VENUE

8.1 Pursuant to Tenn. Code Ann. § 47-18-107, venue as to all matters between the parties relating hereto or arising out of this Assurance is solely in the Chancery Court of Davidson County, Tennessee.

9. REPRESENTATIONS AND WARRANTIES

9.1 Respondent represents and warrants that the execution and delivery of this Assurance is its free and voluntary act, that this Assurance is the result of good faith negotiations, and that Respondent believes that the Assurance and terms hereof are fair and reasonable. The parties warrant that they will implement the terms of this Assurance in good faith.

9.2 Respondent represents that signatories to this Assurance have authority to act for and bind the Respondent.

9.3 Respondent will not participate, directly or indirectly, in any activity to form a separate entity or corporation for the purpose of engaging in acts set forth and prohibited in this Assurance or for any other purpose which would otherwise circumvent any part of this Assurance or the spirit or purposes of this Assurance.

9.4 Neither Respondent nor anyone acting on its behalf shall state or imply or cause to be stated or implied that the Attorney General, the Division, or any other governmental unit of the State of Tennessee approved, sanctioned, or authorized any practice, act, or conduct of the Respondent.

9.5 Acceptance of this Assurance by the State shall not be deemed approval by the State of any of Respondent's advertising or other business practices.

9.6 Within thirty (30) days of the entry of this Assurance, Respondent shall submit a copy of this Assurance to each of its officers, directors, employees and any third parties who act directly or indirectly on behalf of the Respondent as an agent, independent contractor or who are, involved in conducting business in the State of Tennessee. Within forty-five (45) days of entry of this Assurance, Respondent shall provide the State with an affidavit verifying and certifying that all required persons have been supplied with a copy of this Assurance.

9.7 Respondent warrants and represents that it is the proper party to this Assurance and Order. Respondent further acknowledges that the State expressly relies upon this representation and warranty, and that if it is false, misleading or inaccurate, the State may move to vacate or set aside this Assurance and Agreed Order, and may request that Respondent be held in contempt

9.8 Respondent represents and warrants that it did not make any sales of its business opportunity to consumers as a result of Respondent's attendance at the Business Opportunity and Franchise Show held on October 26 and 27 at the Nashville Convention Center. Respondent understands that the State expressly relies upon this representation and if this representation is false or misleading, the State may move to vacate or set aside this Assurance and Agreed Order, and may request that Respondent be held in contempt.

9.9 The Basket Connection, Inc. represents that it is the true legal name of the entity entering into this Assurance of Voluntary Compliance and Agreed Order. Respondent understands that the State expressly relies upon this representation and if this representation is false or misleading, the State may move to

vacate or set aside this Assurance and Agreed Order, and may request that Respondent be held in contempt.

9.10 This Assurance and Agreed Order may only be enforced by the parties hereto.

9.11 The titles and headers to each section of this Assurance are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Assurance.

9.12 This document shall not be construed against the "drafter" because both parties participated in the drafting of this document.

9.13 This Assurance and Agreed Order constitutes the complete agreement of the parties with regard to the resolution of the matters set forth in the State's Petition. This Assurance is limited to resolving only matters set forth in the State's Petition.

9.14 Nothing in this Assurance shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State of Tennessee. In addition, this Assurance shall not bar the State or other governmental entity from enforcing laws, regulations or rules against Respondent.

9.15 This Assurance shall be binding and effective against Respondent upon Respondent's signing the Assurance.

10. COMPLIANCE WITH LAWS

10.1 Nothing in this Assurance and Order shall be construed as relieving Respondent of the obligation to comply with any state or federal law, regulation or rule.

11. FILING OF ASSURANCE

11.1 Upon the execution of this Assurance, the Attorney General shall prepare and file in the Chancery Court for Davidson County a Petition, Agreed Order and this Assurance for the Court's approval. Respondent hereby waives any and all rights which it may have to be heard in connection with judicial proceedings upon the Petition. Respondent agrees to pay all costs of filing such Petition, Assurance and Agreed Order. Simultaneously with the execution of this Assurance, Respondent shall execute an Agreed Order. This Assurance is made a part of and is incorporated into the Agreed Order.

12. APPLICABILITY OF ASSURANCE TO RESPONDENT

AND ITS SUCCESSORS

12.1 Respondent agrees that the duties, responsibilities, burdens and obligations undertaken in

connection with this Assurance shall apply to it, each of its officers, directors, agents, or other entities it controls, manages or operates, its successors and assigns, and to other persons or entities acting directly or indirectly on its or their behalf.

13. COSTS

13.1 All costs associated with the filing and distribution of this Assurance and any other incidental costs or expenses incurred thereby shall be borne by Respondent. No costs shall be taxed against the State as provided by Tenn. Code Ann. § 47-18-116. Further, no discretionary costs shall be taxed to the Respondent.

14. NOTIFICATION TO STATE

14.1 For five (5) years following execution of this Assurance, Respondent shall notify the Attorney General, c/o Consumer Protection Division, 500 Charlotte Avenue, Nashville, Tennessee 37243-0491, in writing, at least thirty (30) days prior to the effective date of any proposed changes in its corporate structure, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or firm, the creation or dissolution or subsidiaries, or any other changes in Respondent's status that may effect compliance with obligations arising out of this Assurance.

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